

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BRICKLAYERS PENSION TRUST FUND -
METROPOLITAN AREA, et al.,

Plaintiffs,

v.

Case No. 07-CV-15253-DT

JOHN D. SIMON,

Defendant.

/

**OPINION AND ORDER GRANTING PLAINTIFFS' "MOTION FOR DEFAULT
JUDGMENT ESTABLISHING LIABILITY AND ORDERING AUDIT"**

The matter is before the court on Plaintiffs' "Motion for Default Judgment Establishing Liability and Ordering Audit." The court, being fully advised on the premises, finds as follows.

Plaintiffs filed their complaint against Defendant John Simon, a sole proprietor, on December 10, 2007. In their complaint, Plaintiffs allege that Defendant failed to perform his contractual obligation to remit fringe benefit contributions and Plaintiffs seek an order requiring Defendant to perform his contractual obligations and to submit his books and records for an audit. Defendant was served with a copy of the summons and complaint on January 8, 2008. On February 8, 2008, Plaintiffs obtained a clerk's entry of default under Federal Rule of Civil Procedure 55(a) because Defendant had not answered, responded to or otherwise defended against Plaintiffs' complaint. That same day, Plaintiffs filed their Federal Rule of Civil Procedure 55(b)(2) motion for entry of default judgment against Defendant, and the court held a March 12, 2008 hearing on

the motion. Defendant did not respond to Plaintiffs' motion for default judgment or appear at the hearing. Defendant is not an infant, incompetent person or engaged in the military service.

Because Defendant has not responded to, or defended against, Plaintiffs' complaint, Defendant is deemed to have admitted all of Plaintiffs' well-pleaded allegations. *Ford Motor Co. v. Cross*, 441 F.Supp. 2d 837, 846 (E.D. Mich. 2006) (citing *Visoneering Constr. v. U.S. Fidelity and Guaranty*, 661 F.2d 119, 124 (6th Cir. 1981)). Plaintiff is therefore entitled to default judgment as to Defendant's liability. See *id.*; Fed. R. Civ. P. 55. Accordingly,

IT IS ORDERED that Plaintiffs' "Motion for Default Judgment Establishing Liability and Ordering Audit" is GRANTED. Defendant shall submit his books and records from April 2004 onwards for an audit.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: March 17, 2008

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, March 17, 2008, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522